

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 9th day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,
HON. ROBERT D. SACK,
HON. PETER W. HALL,
Circuit Judges.

Isljam Nikaj,
Petitioner,

-v.-

No. 03-40927-ag
NAC

Alberto R. Gonzales,¹
Respondent.

FOR PETITIONER: Isljam Nikaj, pro se, Farmington Hills, Michigan.

FOR RESPONDENT: James R. Dedrick, Acting United States Attorney for the Eastern District of Tennessee, Tammy Owens Combs, Assistant United States Attorney, Chattanooga, Tennessee.

UPON DUE CONSIDERATION of this petition for review of the Board of Immigration

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft.

1 Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the
2 petition for review is DENIED.

3 Isljam Nikaj, pro se, petitions for review of the BIA’s October 2003 decision affirming
4 Immigration Judge (“IJ”) Sandy K. Hom’s denial of his application for asylum, withholding of
5 removal and relief under Article 3 of the Convention Against Torture. We assume the parties’
6 familiarity with the underlying facts and procedural history.

7 Where, as here, the BIA summarily affirms the decision of the IJ without issuing an
8 opinion, *see* 8 C.F.R. § 1003.1(e)(4), we review the IJ’s decision as the final agency
9 determination. *See, e.g., Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S.*
10 *Dep’t of Justice*, 362 F.3d 155, 158 (2d Cir. 2004). We review the agency’s factual findings
11 under the substantial evidence standard, treating them as “conclusive unless any reasonable
12 adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B); *see Zhou*
13 *Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004). A determination “based on flawed
14 reasoning . . . will not satisfy the substantial evidence standard,” and the agency’s use of “an
15 inappropriately stringent standard . . . constitutes *legal*, not factual error.” *Id.*; *Cao He Lin v. U.S.*
16 *Dep’t of Justice*, 428 F.3d 391, 400 (2d Cir. 2005).

17 Here, the IJ’s finding that changed country conditions undermined any fear of persecution
18 that Nikaj may possess is supported by substantial evidence. Background materials in the record
19 indicate that amnesty has been granted to draft evaders and military deserters in Serbia and
20 Montenegro, and that conditions have improved for both countries’ ethnic Albanians. In
21 addition, substantial evidence supports the IJ’s finding that Nikaj’s political involvement in a
22 student youth group, and the destruction of his father’s café, were not material to his claim.
23 Nikaj presented no evidence that he feared mistreatment on account of his membership in the
24 student group, and the destruction of his father’s property did not involve him.

1 For the foregoing reasons the petition for review is DENIED. Having completed our
2 review, any stay of removal that the Court previously granted in this petition is VACATED, and
3 any pending motion for a stay of removal in this petition is DENIED. Any pending request for
4 oral arguments in his case is DENIED in accordance with Federal Rule of Appellate Procedure
5 34(a)(2), Second Circuit Local Rule 34(d)(1).

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9 FOR THE COURT:
10 Roseann B. MacKechnie, Clerk

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12 By: _____